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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,006

10/02/2003

Jorn Borch Soe

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EXAMINER

WONG, LESLIE A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/676,006	Applicant(s) SOE ET AL.	
	Examiner Leslie Wong	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-19 and 28-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-19 and 28-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/29/08</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-19 and 28-53 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for hexose oxidase, does not reasonably provide enablement for all oxidoreductases. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

The specification only contemplates hexose oxidase as the oxidoreductase. No other oxidoreductases are taught.

Applicant's arguments filed May 30, 2008 have been fully considered but they are not persuasive.

Applicant argues that one of ordinary skill in the art would know what is encompassed by oxidoreductase.

No where in Applicant's specification is anything other than hexose oxidase contemplated.

The declaration under 37 CFR 1.132 filed May 30, 2008 is insufficient to overcome the rejection of claims 13-19 and 28-53 based upon 35 U.S.C. 112, first paragraph, as set forth in the last Office action for the following reasons.

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Affidavits or declarations presented to show that the disclosure of an application is sufficient to one skilled in the art are not acceptable to establish facts which the specification itself should recite. In re Buchner, 929 F.2d 660, 18 USPQ2d 1331 (Fed. Cir. 1991).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 17, 18, 28, 32, 33, 35-40, 44-48, and 52 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fok et al (US 5451413).

Fok et al teach the use of an oxidoreductase to improve dough quality (see entire patent, especially claims 4-7). Fok et al also teach the use of an emulsifying agent (see claim 6).

The claims appear to differ as to the use of an oxidoreductase that is capable of oxidizing maltose.

The ability to oxidize maltose would be inherent and/or obvious to that of Fok et al as the oxidoreductase is used as a dough improver as is claimed.

Claims 14-16, 19, 29-31, 34, 41-43, 49-51, and 53 rejected under 35 U.S.C. 103(a) as being unpatentable over Fok et al (US 5451413).

Fok et al disclose the use of an oxidoreductase to improve dough quality (see entire patent, especially claims 4-7). Fok et al also teach the use of an emulsifying agent (see claim 6).

The claims differ as to the specific type of oxidoreductase and emulsifier.

In the absence of a showing to the contrary the selection of oxidoreductase and emulsifier is seen as no more than a matter of choice and well-within the skill of the art.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use any oxidoreductase that serves as a dough improver and any dough emulsifier as both the use of oxidoreductases and emulsifiers in the dough art is no more than conventional. Applicant is using known components for their art-recognized function to obtain no more than expected results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/
Primary Examiner, Art Unit 1794

LAW
August 29, 2008